



H-2B WORKERS ON GUAM



H-2B WORKERS DEFINED

Workers admitted into the U.S. under an H-2B visa are:

- Temporary Non-Agricultural workers.
- Worker must be a foreign national with no intention of abandoning his citizenship (non-immigrant).
- Duration of the visa is up to 1 year and extendable to 3 years, renewed yearly.
- After 3 years, the worker must exit the U.S. for at least 3 consecutive months in order to be allowed re-entry.



H-2B WORKERS ON GUAM



ONLY ON GUAM

- Guam is the only jurisdiction who has delegated authority to issue Temporary Labor Certifications.
- With the delegated authority, Guam also issues Prevailing Wage Determinations.
- Enforcement of the program also rests with GovGuam, in partnership with other law enforcement agencies, primarily U.S. Immigration & Customs Enforcement.



H-2B Petition Process



File and obtain a Temporary Labor Certification from the Governor of Guam.



File an I-129 Petition with USCIS and obtain approval.



Approval notice sent to U.S. Embassy and worker then applies for Visa to enter the U.S.



Within 24 hours of the arrival of the worker, the employer must file an Application for Worker Registration with ALPCD



Job Requirements



- Decide what positions you will apply for.
- Determine what your job requirements will be (Job Description, years experience required, education required, any special requirements).
- Make sure that your job requirements are based on U.S. standards and are not overly restrictive.
- Make sure you are able to justify any special job requirements based on business necessity.
- Determine if there will be any job benefits and be prepared to list them in job postings. Special care needs to be taken with Guam Build Up projects as specific Workforce Housing & Logistics requirements may be required by the military contract.



IMPORTANT



FILE 60-90 DAYS IN ADVANCE – ESPECIALLY FOR EXTENSIONS:

Although the filing deadline is 40 days, you must allow time for any unforeseen delays.

ATTORNEY REPRESENTATION WILL NOT SAVE YOU:

Don't expect that your immigration attorney can work through all problems. If you give your documents to your attorney late or do not follow through on recruitment, your attorney can do nothing to save the application. It starts with you as the employer.

GET GOOD OFFICE PEOPLE:

If you do your own petitions, make sure your office people know what they are doing. Ignorance of the regulations does not excuse non-compliance. Seek legal advice if you are not expert at the process and make sure your office people quickly and accurately provide needed documents.



Labor Certification Process



PRIOR TO FILING

- Seek legal advice. Employers may represent themselves, but outside parties must be lawyers barred in Guam as the labor certification process is a practice of law.
- If the nature of business is non-construction, apply for a Prevailing Wage Rate for each occupation to be imported.
- Attempt to recruit U.S. workers and document such attempts.
- Obtain and complete an Inter-Departmental Clearance Sheet
- File a completed Application for Temporary Labor Certification 60-90 days prior to the start dated of the workers.



Prevailing Wage Determination



CONSTRUCTION H-2B PREVAILING WAGE

Amended Common Construction Prevailing Wage Rates For Guam dated 10/6/08 are still in effect due to Bayou Lawn & Landscaping Services, et al. v. *Solis*, et al. court case. The list of rates is in the Program Booklet, or on the DOL web site.

NON-CONSTRUCTION H-2B PREVAILING WAGE

Employer must submit an Application for Prevailing Wage Determination to receive a valid wage rate. There is no established list as rates are job specific based on a 4-tier determination system established by the USDOL.

DAVIS-BACON vs H-2B PREVAILING WAGE

Employer must compare Davis-Bacon and H-2B rates and offer whichever is higher on the temporary labor certification. Care must be taken on Guam Build Up projects due to special Davis-Bacon rates that may apply.



Prevailing Wage Determination



FUTURE CHANGES TO PREVAILING WAGE DETERMINATIONS

- Due to an injunction in the Bayou Lawn & Landscaping Services, et al. v. *Solis*, et al. court case, the old system of prevailing wage determination is in effect. Oral arguments were heard in Dec. 2012 but no decision yet.
- Should the government prevail in the case, Prevailing Wage Determinations in Guam will be done through a National Processing Center. The 4-tier system will cease and a prevailing wage rate must be obtained before each labor certification filing.
- The methodology for determining wages will be that the Prevailing Wage would be set at the higher of either the OES Mean Rate, an applicable Davis-Bacon / SCA rate or a binding collective bargaining rate if applicable.



Key Documents in Labor Certs



Application for Temporary Labor Certification - Form GDOL 750
 Form G-28 (for employers using Attorneys to file the application only)
Completed Job Order- Form GES 514
 Proof of Recruitment Efforts Made Prior to Filing the Application
 Proposed Three Day Advertisement (called 2nd Ad)
 Proof of Publication of Three Day Advertisement
 Proposed Employment Contract
 Barracks/ Housing Location Sketch
Project Summary Sheet
 Project Location Sketch
 Project Contracts – Prime & Sub
 Building Permit
 Written Submittal (only if contractor is also the developer)
 Worksite/Office Location
Audited Financial Statement (Non-Construction only)
Written Submittal Justifying the Need for Temporary Alien Workers (Non-Construction only)
 Employer Profile, Assurances and Sureties
 Contractor's License or Business License (for non-construction)
 Articles of Incorporation or Partnership Agreement
Completed Clearance Sheet
 Notarized Statement of Employer's Assurances
Wage Bond
Repatriation Bond
 Statement of Temporary Nature



Key Documents in Labor Certs



Guam Department of Labor APPLICATION FOR TEMPORARY ALIEN LABOR CERTIFICATION																																
<div style="float: right; font-size: small;"> IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM The Government of Guam will make information in the preparation of this form and any supporting documents on a job, shall be considered evidence to the job, is a felony punishable by \$25,000.00 fine or five years in the penitentiary, or both (19 U.S.C. 1001) </div>																																
OFFER OF EMPLOYMENT																																
1. Name of Alien (if empty name in capital letters, First, Middle)																																
2. Present Address of Alien (Number, Street, City, State, Zip Code or Country)								3. Type of Visa (if in U.S.)																								
4. Name of Employer (if of name of organization)																																
5. Telephone Number								6. Address (Number, Street, City, State, Zip Code)																								
7. Address Where Alien Will Work (if different from item #6)																																
8. Employer's Business Activity		9. Name of Job Title		10. Total Hours Per Week Basic Overtime		11. Work Schedule Hourly a.m. p.m.		12. Rate of Pay Basic Overtime \$ Per Hour \$ Per Hour																								
13. Describe Fully the Job to be Performed (Detail)																																
14. State in detail the MINIMUM education, training and experience for a worker to perform satisfactorily the job described in item #13 above																																
15. Other Special Requirements																																
<table border="1" style="width: 100%;"> <tr> <td rowspan="2">EDUCATION Enter # of yrs</td> <td>Grade School</td> <td>High School</td> <td>College</td> <td>Degree Rec'd</td> </tr> <tr> <td colspan="4">Major Field of Study</td> </tr> <tr> <td rowspan="2">TRAINING</td> <td>No. of Yrs</td> <td>No. of Months</td> <td colspan="2">Type of Training</td> </tr> <tr> <td>Job Offered Yes</td> <td>Relieved Supervision Yes</td> <td colspan="2">Related Occupation (Specify)</td> </tr> <tr> <td colspan="5">EXPERIENCE</td> </tr> </table>										EDUCATION Enter # of yrs	Grade School	High School	College	Degree Rec'd	Major Field of Study				TRAINING	No. of Yrs	No. of Months	Type of Training		Job Offered Yes	Relieved Supervision Yes	Related Occupation (Specify)		EXPERIENCE				
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16. Occupational title of the person who will be the alien's immediate supervisor																																
17. Number of employees the alien will supervise																																
GOVERNMENT OF GUAM TEMPORARY LABOR CERTIFICATION																																
Qualified U.S. workers are not available. Temporary employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. residents.																																
Valid From: _____ Thru: _____																																
<div style="display: flex; justify-content: space-between;"> <div> RECOMMENDATION: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved </div> <div> DETERMINATION: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved </div> </div>																																
ENDORSEMENTS (For Government Use Only) Occupational Coding NAICS Code _____ NAICS Code _____ O-Net Title _____																																
<div style="display: flex; justify-content: space-around;"> <div> GEORGE A. SANTOS Director of Labor </div> <div> EDDIE BAZA CALVO Governor of Guam </div> </div>																																

Form 5005, 7/99, R/01/1



Key Documents in Labor Certs



18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY		19. IF JOB IS UNIONIZED (Complete)	
a. No. of Offerings to Be Filed by Aliens Under Job Offer	b. Exact Dates You Expect to Employ Alien	a. Number of Local	b. Name of Local
FROM	TO		c. City and State
20. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS ESSENTIAL TO THE FILING OF THE APPLICATION AND THE RESULTS OF SUCH RECRUITMENT (Specify Sources of Recruitment by Name)			
EMPLOYER CERTIFICATIONS			
By virtue of my signature below, I HEREBY CERTIFY, the following conditions of employment:			
a. I have enough funds available to pay the wage or salary offered the alien.		e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap or citizenship.	
b. The wage offered equals or exceeds the prevailing wage and I guarantee that if a labor certification is granted, the wage paid to the alien, when the alien begins to work, will be the rate specified on the labor certification.		f. The job opportunity is not: (1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving work stoppage. (2) At issue in a labor dispute involving a work stoppage.	
c. The wage offered is not based on commissions, bonuses or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly or monthly basis.		g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.	
d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.		h. The opportunity has been and is clearly open to any qualified U.S. worker.	
DECLARATIONS			
DECLARATION OF EMPLOYER: Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.			
SIGNATURE		DATE	
NAME (Type or Print)		TITLE	
AUTHORIZATION OF ATTORNEY FOR EMPLOYER: I HEREBY DESIGNATE the attorney below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for the accuracy of any representations made by the attorney.			
SIGNATURE OF EMPLOYER		DATE	
NAME OF ATTORNEY (Type or Print)		ADDRESS OF ATTORNEY (Number, Street, City, State, Zip Code or Country)	

Key Documents in Labor Certs



EMPLOYER CERTIFICATIONS

By virtue of my signature below, I HEREBY CERTIFY, the following conditions of employment.

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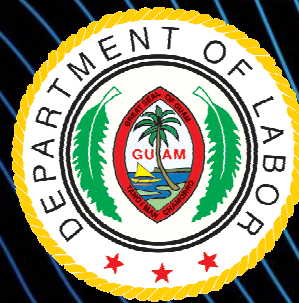
Labor Market Testing



FOR A PERIOD OF 30 DAYS, THE EMPLOYER MUST UNDERGO RECRUITMENT OF U.S. WORKERS FOR THE POSITIONS BEING PETITIONED.

THE EMPLOYER IS REQUIRED TO:

- Advertise for 3 consecutive working days in the newspaper of largest general circulation on Guam
- Post notices of the job opportunity in the Guam Job Bank. These notices are now highly visible nationwide via the National Labor Exchange system.
- Entertain any walk-in applicants from the One Stop Career Center system.



Interviewing US Workers
While testing the labor market



REVIEW OF THE APPLICATION

You must review all applications provided by GES. Determine if the applicants meets the minimum qualifications for the job. If the applicant clearly does not meet the qualifications, you may reject the applicant as being NOT QUALIFIED.

INTERVIEWING

You must interview those applicants who meet the minimum requirements as stated on the Job Order.

If the applicant is nominally qualified or may be seemingly qualified pending additional information, the employer should go ahead and interview the applicant.



TIPS !

- Be careful on interview questions. You may only ask questions related to the job (i.e., You cannot ask a Mason applicant if he can operate Heavy Equipment).
- Be careful on your comments during the interview. Any attempts by the employer to discourage an applicant may result in a negative outcome on the labor certification.
- If testing, ensure foreign workers are also subject to the same test as a condition of employment and that the test is based on U.S. standards. It is best to clear any written or physical test with ALPCD before subjecting applicants to such test.
- Any special requirements (i.e., Drivers License, Certifications, Police or Court Clearance) must be included on the job posting and may only be imposed, prior to hire, if the alien worker possesses such prior to hire.



TIPS !

It is illegal for employers to discriminate because of a person's race, color, sex, national origin, religion, age or disability when hiring.

Here are some examples of illegal questions that may be asked during an interview that could be construed as discriminatory against a U.S. applicant:

- What is your race?
- What is your age?
- Are you married?
- What is your religious background?
- Do you have any children?
- Do you have a back injury?
- Have you ever been on Workers' Compensation?
- Are you disabled/do you have a disability?
- Do you take any medications?
- How many sick days did you take last year?
- How long have you had your disability?

AS AN EMPLOYER, YOU MUST CONCENTRATE ON THE APPLICANT'S ABILITIES AND KNOWLEDGE OF THE JOB TO BE PERFORMED.



DECISIONS ON APPLICANTS

Once you have decided to hire or not hire, you must complete the GES Applicant Referral/Placement Follow Up Form, and submit it immediately to Guam Employment Service (GES).

- If the applicant is hired, make sure to indicate the start date. The start date may not be beyond the start date of the H-2B worker indicated on the GDOL 750.
- If the applicant is not hired, clearly indicate the job-related reason for the rejection of the applicant. This reason will be closely reviewed and verified by ALPCD caseworkers.

DELAYS IN SUBMITTING THESE RESULTS OF RECRUITMENT WILL DELAY THE FINAL PROCESSING OF THE LABOR CERTIFICATION.

GES will compile all of the employer's recruitment results and submit their comments to ALPCD for consideration in adjudicating the labor certification.

Adjudication



ALPCD CASEWORKER REVIEW

ALPCD caseworkers will review all documents submitted by the employer and by GES to determine:

- Is there an actual job opening, and does the employer have sufficient work available for the duration of time listed on the labor certification?
- Are there any QUALIFIED, WILLING and AVAILABLE U.S. workers based on the labor market testing?
- Will the employment of H-2B workers adversely affect the wages and working conditions of similarly employed U.S. workers in the employer's organization?
- Has the employer met all regulatory requirements and is the employer in good standing with the Government of Guam?

THE CASEWORKER MAY RECOMMEND APPROVAL, PARTIAL DENIAL OR FULL DENIAL OF THE APPLICATION.



Adjudication



FINAL STEPS OF ADJUDICATION

- The caseworker formulates a synopsis of the application and makes a recommendation to the ALPCD Administrator who will either approve or remand the case back to the caseworker for corrective action.
- Once approved by the Administrator, the application is forwarded to the Director of Labor, who then makes the formal recommendation to the Governor of Guam on the GDOL 750.
- The application is then forwarded to the Office of the Governor and undergoes review by the Governor's Legal Counsel.
- Upon successful legal review, the GDOL 750 is signed by the Governor of Guam or his authorized representative with an indication of approval or denial.



Adjudication



NOW THAT THE GOVERNOR HAS SIGNED.....

If an approval was issued, the employer must file an I-129 petition with the US Citizenship & Immigration Service. The labor certification must be filed with the petition.



If a denial was issued, a reason for the denial will be attached to the denied GDOL 750 forms. The Governor's decision on the labor certification is final and not subject to appeal by any other authority.



Updates



Good News ! Repatriation Bond Amount Decreased !

Country of Origin	Repatriation Bond Standard Rate
Australia, Sidney	\$2,143.28
Canada, Ontario	\$1,504.50
England, London	\$3,582.41
Indonesia, Bali	\$817.91
Japan, Tokyo	\$557.49
Korea, Seoul	\$727.15
New Zealand, Auckland	\$1,673.78
Palau, Koror	\$421.00
Philippines, Manila	\$1,079.79

Country of Origin	Repatriation Bond Standard Rate
Australia, Sydney	\$1,418.05
Canada, Ontario	\$1,362.00
Japan, Tokyo	\$641.15
Kiribati, Tarawa	\$3,381.40
Korea, Seoul	\$733.53
New Zealand, Auckland	\$2,745.40
Palau, Koror	\$993.30
Philippines, Manila	\$482.53



Contact Info & Help



Staff Name	Title	Telephone	Email Address
Greg S. Massey	ALPCD Administrator	475-7005 300-4551	greg.massey@dol.guam.gov
Alexandra Santos	Employment Development Worker	475-7135 300-4549	alexandra.santos@dol.guam.gov
Dorinda Meno	Certification Section Head	475-7013 300-4549	dorinda.meno@dol.guam.gov

